NEO TAI KIM v. FOO STIE WAH

[C.A. (Wee Chong Jin C.J., Kulasekaram & Rajah JJ.) September 17, 1981]

[Singapore — Civil Appeal No. 109 of 1980]

Family Law — Husband and wife — Property in wife's name — Presumption of advancement.

Trust — Husband and wife — Presumption of advancement — Onus on person seeking to negate presumption of advancement.

At the time of the trial the appellant and the respondent were husband and wife respectively. In Suit No. 3744 of 1976, the respondent/wife claimed that she was the registered sole proprietor of a restaurant business known as Skillets and she was entitled to possession of the premises as lessee by a lease dated September 12, 1974 made between her and the owners of the premises. She also claimed that she obtained overdraft facilities for Skillet on the security of her two properties, 42 Mount Sinai Avenue and 56 Mount Sinai Drive.

The appellant/husband averred that he was the true owner of Skillets and that it was registered in the wife's name as his nominee. He also claimed ownership in the said two properties and that they were registered in her name to be held by her in trust for him absolutely.

In Suit No. 3999 of 1976, the respondent pleaded that she mortgaged her two properties, 44 One Tree Hill and No. 36 Belmont Road to Chung Khiaw Bank Ltd. and Malayan Banking Bhd. respectively to secure overdraft facilities for the appellant. She sought for declaration that she was entitled to be discharged from all liabilities under the two mortgage deeds and that the husband do pay the two banks and obtain reconveyances of the said two properties.

In Suit 637 of 1977 the appellant claimed for a declaration that the houses No. 19 Jalan Mariam and No. 2 Grove Lane were held by the respondent in trust for him absolutely. The respondent claimed that the two properties were by agreement between the appellant and herself bought out of the funds of the restaurant for her sole beneficial use.

The trial judge held that No. 44 One Tree Hill was not held by the respondent in trust for the appellant and that it was the respondent's property. The trial judge rejected the respondent's claim that she paid for 42 Mount Sinai Avenue and 56 Mount Sinai Drive out of her funds. He held that the respondent had an equal share in the two properties, 42 Mount Sinai Avenue and 56 Mount Sinai Drive. The husband appealed and the wife cross appealed against the judgment of the trial court.

Held, dismissing the appeal and cross-appeal: (1) if the parties are husband and wife and the husband is the provider of the funds for the purchase of the property and puts it in the name of his wife a resulting trust in favour of the husband does not arise as the doctrine of the presumption of advancement comes into play on behalf of the wife to negative the resulting trust in favour of the husband;

(2) the doctrine of presumption of advancement is a rebuttable presumption and can be rebutted if the husband can show that, at the time of the transaction there was, as between them, a common intention that it was to be otherwise. Common intention may be proved by the acts and declarations of the parties before or at or immediately after the time of purchase, constituting part of the same transaction but subsequent declarations are admissible as evidence only against the party who made them and not in his favour;

(3) the appellant had not rebutted the presumption of advancement in favour of his wife, the respondent. His claim to beneficial ownership in 44 One Tree Hill must therefore fail and the learned trial judge's finding that 44 One Tree Hill was not held by the respondent in trust for the appellant and that it was the respondent's property should not be disturbed;

(4) as the appellant and the respondent were partners in the two business of the International Airport Restaurant and the Emerald Room, the presumption of advancement was rebutted in the case of the two immovable properties, 42 Mount Sinai Avenue and 56 Mount Sinai Drive which were bought out of the partnership funds. There was therefore no reason to disturb the findings of the learned trial judge on these two properties; the parties were tenants-in-common in equal shares of the said properties;

(5) likewise, the presumption of advancement was also rebutted in the case of the three properties, 2 Grove Lane, 19 Jalan Mariam and 36 Belmont Road which were bought out of the partnership funds. The parties were tenants-in-common in equal shares of the said properties; there was therefore no reason to disturb the finding of the learned trial judge on these three immovable properties;

(6) as regards Skillets, there was no sufficient evidence to rebut the presumption of advancement. The finding of the learned trial judge that the respondent was the sole owner of Skillets must stand.

Cases referred to:-

(1) *Shephard* v. *Cartwright* [1955] A.C. 431.
(2) *Pettitt* v. *Pettitt* [1969] 2 All E.R. 385.
(3) *Gissing* v. *Gissing* [1970] 2 All E.R. 780.
(4) *Cowcher* v. *Cowcher* [1972] 1 All E.R. 943.
(5) *Nixon* v. *Nixon* [1969] 1 W.L.R. 1676, 1679.
(6) *Cummins* v. *Thompson & Ors.* [1971] 3 W.L.R. 580, 584.
(7) *Gascoigne* v. *Gascoigne* [1918] 1 K.B. 223.
(8) *Tinker* v. *Tinker* [1970] 1 All E.R. 540.
(9) *Re Cummings* [1971] 3 W.L.R. 580.

CIVIL APPEAL.

H.E. Cashin for the appellant.

L.A.J. Smith for the respondent.

Cur. Adv. Vult.

Rajah J. (delivering the judgment of the Court): This appeal by the appellant and cross-appeal by the respondent arises from certain orders relating to property rights *inter se* made by Chua J. in Consolidated Suits Nos. 3744 of 1976 and 3999 of 1976 and in Suit No. 637 of 1977 ordered to be heard by the same trial judge immediately after the hearing of the consolidated suits. At the hearing of the consolidated suits the parties agreed that the evidence led therein be used in Suit No. 637 of 1977. At the time of the trial the appellant and the respondent were husband and wife respectively, they having been married in 1954 according to Chinese customary rites.

Suit No. 3744 of 1976 — In this suit the respondent, who was the plaintiff therein, averred that (1) she was the registered sole proprietor of a restaurant business situate at No. G27, Supreme House, Penang Road, Singapore (the premises) and known as Skillets and (2) she was entitled to possession of the premises as lessee by a lease dated September 12, 1974 made between the owners of the premises and herself. She further averred that the Asia Commercial Banking Corporation Limited had allowed Skillets overdraft facilities up to a limit of $100,000 on the security of her two properties known as 42 Mount Sinai Avenue and 56 Mount Sinai Drive, Singapore. Her claim against the appellant, who was the defendant in the suit, was for possession of the premises together with all the equipment, furniture and fittings therein and for an account of all receipts and payments dealings and transactions carried out by the appellant from June 1, 1974 to date of judgment.

In his amended defence and counter-claim the appellant contended that he was at all material times

the true owner of Skillets and that it was registered in the respondent's name as his nominee and that by reason thereof the respondent was holding Skillets in trust for him and counterclaimed that Skillets, registered in the Registry of Business Names in the name of the respondent, was held by her as his trustee and nominee for his benefit absolutely. He further averred that he was the true owner of the aforementioned two properties and that all payments for their purchase including all outgoings were made by him out of his funds and sought a declaration that these two properties registered in her name were held by her in trust for him absolutely.

In her reply to the amended defence and counterclaim the respondent, *inter alia,* denied that the appellant had invested any capital in Skillets and denied that the payments for the purchase of the aforementioned properties were made by the appellant out of his own funds.

Suit No. 3999 of 1976 — In this suit the respondent, the plaintiff therein, pleaded that she had mortgaged her two pieces of immovable property known as No. 44 One Tree Hill and No. 36 Belmont Road to the Chung Khiaw Bank Limited and Malayan Banking Berhad respectively to secure the overdraft account of the appellant, the defendant therein, with the two banks. She claimed for two declarations that she was entitled to be discharged and exonerated from all liabilities under the two mortgage deeds dated respectively March 15, 1972 and February 25, 1974 and for orders that the appellant (1) do pay forthwith to the two banks all moneys due and owing to them and (2) do obtain reconveyances of the said two properties.

The appellant in his amended defence and counterclaim pleaded that all payments for the purchase of the said two properties including all outgoing expenses were made by him out of his own funds and counterclaimed for a declaration that the said two properties which were registered in the name of the respondent were held by her in trust for him. On an application by the respondent under Order 14 rule 3 judgment was entered on March 4, 1977 for the respondent on her claim for the two declarations, leave being given to the respondent to defend the balance of the claim. In her reply to the amended defence and counterclaim the respondent averred that (1) the funds used to purchase 44 One Tree Hill were her own funds and (2) the funds used to purchase 36 Belmont Road were funds generated from a business known as Emerald Room in which she worked full time as a working wife and the house which was bought from the funds so provided was meant and intended to be for her sole beneficial use.

Suit No. 637 of 1977 — In this suit the appellant, the plaintiff therein, claimed against the respondent, the defendant therein, for a declaration that houses Nos. 19 Jalan Mariam, Singapore and 2 Grove Lane, Singapore registered in the respondent's name were held by her in trust for him absolutely. In her defence the respondent pleaded that she and the appellant, her husband, had for several years carried on business as restaurateurs together and that these two properties among others, were by agreement between the appellant and herself bought out of the funds of such business for her sole beneficial use.

It is quite clear from the Record of Appeal that both parties led evidence and presented their cases well outside the limits of their pleadings without objection from either side. It therefore lies ill in the mouth of the appellant for him to say in his grounds of appeal that "the learned trial judge erred in law in considering the doctrine of presumption of advancement when the respondent never pleaded it nor relied on it to prove that the property purchased (44 One Tree Hill) in her name was in fact hers" and again that "The respondent in her pleadings and in her evidence rested her case on the fact that she bought the said house (44 One Tree Hill) out of her savings which fact the learned trial judge rejected. It was never the respondent's case as set out in her pleadings or relied on in her evidence that the said house was bought for her as the matrimonial home". In this situation we are not surprised that the trial judge based his findings on the evidence as presented in court and gave his judgment on the submissions made to him by counsel. We therefore propose to deal with this appeal on the basis of the evidence presented in the trial court and on the submissions made by counsel to the trial judge.

At the end of the trial the issues before the learned trial judge were, in our view, as follows: —

A. On the evidence before the trial court and in accordance with equitable principles relating to trusts who was or were the beneficial owner or owners of No. 44 One Tree Hill (Suit 3999 of 1976), the matrimonial home of the respondent, the legal estate therein being vested in the respondent.

B. On the evidence before the trial court and in accordance with equitable principles relating to trusts and according to the law of partnership who was or were the beneficial owner or owners of (i) No. 36 Belmont Road (Suit 3999 of 1976) (ii) 42 Mount Sinai Avenue (Suit 3744 of 1976) (iii) 56 Mount Sinai Drive (Suit 3744 of 1976) (iv) No. 2 Grove Lane (Suit 637 of 1977) and (v) 19 Jalan Mariam (Suit 637 of 1977).

C. On the evidence before the trial court and in accordance with equitable principles relating to trusts who is or are the owner or owners of the business known as Skillets Coffee House together with all the equipment, furniture and fittings therein.

Issue A — 44 One Tree Hill — The learned trial judge rejected the respondent's contention that she had paid for the property and found that the probabilities were that the house was paid for out of funds of the International Airport Restaurant and Emerald Room, two restaurant businesses which stood in the name of the appellant. He also found that the intention of the parties at the date of the purchase of the property (July 31, 1963) in the name of the respondent was to purchase it for her as the matrimonial home. In this context it is relevant to note that long before the date of purchase of this property the appellant had taken unto himself a second wife in 1954 and had established a matrimonial home for her. Finally he

found that No. 44 One Tree Hill was not held by the respondent in trust for the appellant and that it was her property.

The appellant now appeals against these findings. On the evidence before the learned trial judge we are of the view that he did not err in law in so finding. It is well settled that when a person purchases property and pays for it out of his own funds but puts it in the name of another then there is a resulting trust in favour of the purchaser that is to say he retains the beneficial interest unless at the time of the purchase there was a common intention between the parties that the beneficial interest in the property was to be for the person in whose name the purchase was taken, in which case such a person would become the absolute owner of the property, both the legal and beneficial ownership being vested in him. It is also well settled that if the parties are husband and wife and the husband is the provider of the funds for the purchase of the property and puts it in the name of his wife a resulting trust in favour of the husband does not arise as the doctrine of the presumption of advancement comes into play on behalf of the wife to negative the resulting trust in favour of the husband. In other words in such a case the wife gets a full title in the property, that is to say, she is both the legal as well as the beneficial owner of the property. However, it is also settled law that the doctrine of presumption of advancement is a rebuttable presumption and can be rebutted if the husband can show that, at the time of the transaction there was, as between them, a common intention that it was to be otherwise. The onus of so showing is on the husband, as the person seeking to negate the presumption of advancement in favour of the wife.

In the instant case, therefore, it is for the appellant husband to show that at the time of the transaction there was a common intention as between husband and wife to negate beneficial ownership to the respondent wife. Common intention may be proved by the acts and declarations of the parties before or at or immediately after the time of purchase, constituting part of the same transaction but subsequent declarations are admissible as evidence only against the party who made them and not in his favour (*Shephard* v. *Cartwright*[1]). The appellant sought to prove common intention of beneficial ownership to be in himself in two ways, namely, one by direct contemporaneous evidence of common intention as to beneficial ownership when he said in evidence, "I also told her (respondent) I intended to put her name as the buyer and the money would be paid by me and she agreed. I told her I paid for the house and I was the owner of the house; she agreed." and the other by a document alleged to have been executed by the respondent on September 12, 1973 (Ex. D1) which was some ten years after the purchase of the property, declaring that she was a nominee and trustee for the appellant in respect of (a) 44 One Tree Hill (b) 42 Mount Sinai Avenue (c) 56 Mount Sinai Drive (d) 2 Grove Lane (e) 36 Belmont Road (f) 9 Jalan Mariam and (g) the coffee-house business known as "Skillets". The learned trial judge rejected by implication the direct contemporaneous evidence when he found "that the intention of the parties at that time was to purchase this house for the plaintiff (respondent) as the matrimonial home." The same kind of evidence by the appellant in respect of 42 Mount Sinai Avenue, 56 Mount Sinai Road, 2 Grove Lane, 19 Jalan Mariam and 36 Belmont Road was also rejected by the learned trial judge (498 and 500E of the Record of Appeal) as something which never did take place. The learned trial judge also rejected Ex. D1 as rebuttal evidence when he found "that Ex. D1 was not executed by the plaintiff (respondent)" (Page 487E of the Record of Appeal). As these vital pieces of evidence for the appellant were rejected by the learned trial judge, in our view rightly so, we are of the view that the appellant had not rebutted the presumption of advancement in favour of the respondent wife. His claim to beneficial ownership in 44 One Tree Hill must therefore fail and the learned trial judge's finding "that No. 44 One Tree Hill is not held by the plaintiff (respondent) in trust for the defendant (appellant) and that it is her property" (Page 497A of the Record of Appeal) should not be disturbed. On this issue we were referred to the cases of *Pettitt* v. *Pettitt*,[2] *Gissing* v. *Gissing*[3] and *Cowcher* v. *Cowcher*[4] which we have considered.

Issue B — the remaining five properties namely (1) 42 Mount Sinai Avenue and 56 Mount Sinai Drive; (2) 2 Grove Lane, 19 Jalan Mariam and 36 Belmont Road.

(1) *42 Mount Sinai Avenue (Suit 3744 of 1976)*
56 Mount Sinai Drive (Suit 3744 of 1976)

The learned trial judge rejected the respondent's claim that she paid for these properties out of her funds. He also did not accept the appellant's evidence that he had a verbal conversation with the respondent saying that these two properties were for the appellant (Page 498E of Record of Appeal), and went on to say that "The probabilities are that the instalments for these properties were paid out of the funds of the International Airport Restaurant and the Emerald Room and from the rents collected. The plaintiff (respondent) was virtually a partner in the business of the International Airport Restaurant and the Emerald Room and was entitled to an equal share in the profits of these two businesses. I find that the plaintiff (respondent) is entitled to an equal share in these two properties." (Page 499A-C of the Record of Appeal). On the finding that the respondent is entitled to an equal share in the profits of the International Airport Restaurant and the Emerald Room there is no appeal by the appellant or cross-appeal by the respondent. Counsel for the appellant did not seek to vary the learned trial judge's finding that the respondent is entitled to an equal share in these two businesses nor did he seek to vary the finding as to the equal ownership in these two properties. However, on that part of the judgment with regard to the equal ownership in these two immovable properties the respondent has cross-appeal on the ground that on the evidence and the law the learned judge should have held that these two properties belonged absolutely to her.

It was on the authority of *Nixon* v. *Nixon*[5] (Lord Denning M.R.) and *Cummins* v. *Thompson & Ors.*[6] (Lord Denning M.R.) that the learned trial judge found

that the appellant and respondent were equal partners in the two businesses of the International Airport Restaurant and the Emerald Room. There has been no appeal on this finding by either side. These two immovable properties, having been bought out of the partnership assets of the two businesses, are partnership property and as the appellant and respondent are equal partners in these two businesses these two immovable properties are theirs in equal shares. There is no acceptable evidence either way that at the time of the purchase of these two immovable properties that the whole of the beneficial interest in these two properties should be exclusively with one or the other of the two partners. As the appellant and respondent were partners in businesses run by them jointly we are of the opinion that the presumption of advancement is rebutted and the parties herein are tenants-in-common in equal shares of the two abovenamed immovable properties. In the circumstances we see no reason to disturb the finding of the learned trial judge on these two properties.

(2) *2 Grove Lane (Suit 637 of 1977)*
19 Jalan Mariam (Suit 637 of 1977)
36 Belmont Road (Suit 3999 of 1976)

In his judgment on these three immovable properties the learned trial judge has this to say: "The plaintiff (respondent) has satisfied me that the funds for the purchase of these properties came from the Emerald Room. I find that there was no verbal trust as alleged by the defendant (appellant) and that the plaintiff (respondent) is entitled to an equal share in these properties" (Page 500 D & E of the Record of Appeal). Here again counsel for the appellant did not seek to vary this part of the judgment. However, here again, the respondent has cross-appealed on that part of the judgment with regard to the equal ownership in these three immovable properties on the ground that on the evidence and on the law the learned judge should have held that these three immovable properties belonged absolutely to the respondent. Again there is no acceptable evidence either way that at the time of the purchase of these three properties the whole of the beneficial interest in these three immovable properties should be exclusively with one or other of the two partners. As the appellant and respondent were partners in the two businesses run by them jointly we are of the opinion that the presumption of advancement is rebutted and the parties herein are tenants-in-common in equal shares of the three abovenamed immovable properties. In the circumstances, we see no reason to disturb the finding of the learned trial judge on these three immovable properties.

Issue C — Skillets — On this the learned trial judge found that both husband (appellant) and wife (respondent) had been in business together. She wanted a coffee house business of her own and he agreed to that and by this finding the learned trial judge rejected the appellant's evidence that he had told her that, as the limited liability company, which was to take over the business had not been formed the business would in the meantime be registered in her name but the business would belong to him and she agreed (Page 293E of the Record of Appeal). It is to be noted that the appellant had repeated this kind of evidence in parrot fashion in connection with the purchase of all the six immovable properties. On the whole of the evidence before the court the learned trial judge was entitled to make the findings he did. However, it seems to us that on the question of who provided the money for commencing the business of the coffee house his finding, that it was paid out of the business of the Emerald Room and from the savings of the plaintiff (respondent), is against the evidence. In our view the evidence before the trial court points to the appellant having provided the monies for the commencement of the business out of his own funds. This then puts the Skillets issue in the same position as that of 44 One Tree Hill. Here the business had been registered in the respondent's name and the lease of the premises had also been taken in the respondent's name. There is therefore here the situation where by virtue of the doctrine of the presumption of advancement so far as Skillets is concerned, the respondent is both its registered as well as beneficial owner and so far as the lease is concerned, the respondent is both the legal as well as beneficial owner. If the appellant is to succeed in his claim that he is the beneficial owner of Skillets and has the beneficial interest in the lease he must rebut the presumption of advancement by showing that the parties had the common intention that she should be the true owner of the coffee house business and beneficial owner of the lease. His evidence of a verbal conversation with the respondent at the time of the registration of the business and his Exhibit D1 was rejected by the trial judge. On the whole of the evidence there is no sufficient evidence to rebut the presumption of advancement. The finding of the learned trial judge that the respondent is the sole owner of Skillets must stand (Page 510E of the Record of Appeal).

At the hearing of the appeal counsel for the respondent contended that as the appellant's evidence was that he had put all the six properties in his wife's name to protect them from his creditors the court should not allow the appellant to set up his own fraudulent design as rebutting the presumption of advancement as he was seeking equitable relief. He cited the cases of *Gascoigne* v. *Gascoigne,*[7] *Tinker* v. *Tinker*[8] and *Re Cummings.*[9] He cited the appellant's evidence on pages 376E and 377A of the Record of Appeal in support of his contention. We set out below *verbatim* the evidence elicited in cross-examination of the appellant relied on for this proposition by counsel:

Q. Supposing you had bad luck in business and went bankrupt whose houses would they be?

A. If I went bankrupt the houses would still belong to me but in name it belongs to my wife. I agree they would not be available for my creditors. Should I become bankrupt I would sell these two houses (meaning 2 Grove Lane and 19 Jalan Mariam) and pay my creditors. (Page 376E).

Q. No. 44 One Tree Hill, same story. Same reason for putting it in my wife's name?

A. Yes, the same reason for all the other houses. Yes, none of them would be available to my creditors. (Page 337A).

We do not think that this kind of evidence, particularly when one considers the manner in which it was elicited by counsel in cross-examination, is at all helpful in determining the intention of the appellant at the

time of the various purchases. On the evidence we see no merit in this submission and reject it.

In the circumstances both the appeal and cross-appeal are dismissed. Neither party having succeeded in his or her appeal there will be no order as to the costs of the appeal and the cross-appeal. Each party will bear his or her own costs.

Appeal and cross-appeal dismissed.

Solicitors: *Murphy & Dunbar; L.A.J. Smith.*

ANG BOCK CHWEE v. LIM HUAN HEE & ORS.

[O.C.J. (Rajah J.) September 10, 1980]
[Singapore — Suit No. 2941 of 1976]

Landlord and Tenant — Rent-controlled premises — Claim for possession — Statutory tenant — Death of — Whether tenancy determines on his death — Control of Rent Act (Cap. 266) ss. 15 & 16.

Societies — Registered society — Whether registered society can be tenant of property or hold interest in land — Societies Act (Cap. 262).

The plaintiff was owner of Nos. 1 & 3 Meyer Place (the premises). They were transferred to him by his brother Ang Hai San on April 14, 1972 pursuant to an Order of Court of May 11, 1971. At the time of the transfer the premises had been rented by Ang Hai San to one Chua for $168.61 and $202.44 respectively per mensem. Chua allowed Mayfair Musical & Dramatic Association to use the premises as a hostel until 1951. Soon after, the Metropolitan Young Men's Christian Association, Singapore (MYMCA) took over the running of the hostel but the tenant of the premises continued to be Chua who paid the rent to Ang Hai San.

The premises were protected under the Control of Rent Act.

The first, second, third and fourth defendants were the executors of the estate of Chua. The fifth defendant, MYMCA was a society registered under the Societies Act. The sixth and seventh defendants were the trustees of the MYMCA. The said contractual tenancy was terminated by the plaintiff on September 30, 1973. As from October 1, 1973 Chua became a statutory tenant. Chua died on November 26, 1974. No member of his family had ever lived at the premises.

The plaintiff claimed that the tenancy had been validly terminated and that the MYMCA were trespassers.

Held, allowing the plaintiff's claim: (1) the premises were domestic premises within the meaning of the Control of Rent Act;

(2) an association registered under the Societies Act, as in this case the MYMCA cannot be a tenant of property or hold an estate or interest in land;

(3) a statutory tenancy, which is the creation of the Control of Rent Act, is a purely personal right and that such right ceases with and on the death of the statutory tenant, unless the provisions of section 16 of the Control of Rent Act become applicable; in this case the statutory tenancy of Chua came to an end with his death and anyone found living or otherwise on the premises was a trespasser and liable to eviction at the will of the plaintiff;

(4) the plaintiff had no knowledge of any trust in regard to the premises as between Chua and the fifth defendant.

CIVIL SUIT.

G. Murugaiyan for the plaintiff.

Harry L. Wee for the defendants.

Cur. Adv. Vult.

Rajah J.: The plaintiff is the owner of Nos. 1 & 3 Meyer Place, Singapore, formerly known as Nos. 32-A and 32-B, Meyer Road (the premises). They were transferred to him by his brother Ang Hai San on April 14, 1972 pursuant to an Order of Court dated May 11, 1971.

At the time of the transfer Nos. 1 and 3 Meyer Place had been rented by Ang Hai San to one Chua Khiam Teck (Chua) for $168.61 and $202.44 respectively per mensem. Chua allowed Mayfair Musical & Dramatic Association (the Association) to use the premises as the Hostel of the Teachers' Rest House (the hostel). The Association continued in occupation of the premises until they were dissolved in 1951 by Government for carrying on subversive activities. Soon after the dissolution of the Association the Chinese Young Men's Christian Association, now known as the Metropolitan Young Men's Christian Association, Singapore (the MYMCA) took over the running of the hostel but the tenant of the premises continued to be Chua who paid the rent to Ang Hai San. This was the position with regard to the use of the premises on April 14, 1972 when the plaintiff became the owner of the premises and Chua his tenant.

It is not in dispute that the premises are protected under the Control of Rent Act (the Rent Act).

The 1st, 2nd, 3rd and 4th defendants are the executors of the estate of Chua, the 5th defendant is a society registered under the Societies Act and has its registered address at 70 Palmer Road. The 6th and 7th defendants are the present trustees of the MYMCA.

The said contractual tenancy was terminated by the plaintiff on September 30, 1973 by a Notice to Quit dated August 10, 1973 and expiring on September 30, 1973, and as from October 1, 1973 Chua became a statutory tenant of the plaintiff.

Chua died, testate, in Singapore on November 26, 1974 and probate of his will was granted to the 1st, 2nd, 3rd and 4th defendants on May 30, 1975. It is clear from the evidence and it is conceded that no member of the deceased family ever at any time lived in or occupied the premises or any part thereof.

In his statement of claim the plaintiff having asserted that the premises were domestic premises pleaded (1) that the tenancy had been validly terminated, (2) that the deceased Chua at the time of his death was a statutory tenant and (3) that no member of the deceased family was living or had ever lived in the premises and (4) that the incumbent occupiers namely the MYMCA were trespassers. The plaintiff further pleaded that in any event the MYMCA, being a registered society, cannot seek the protection of the Rent Act as under our law a registered society cannot be a tenant of property nor hold an estate or interest in land.

Having so pleaded the plaintiff claimed: —

(a) A declaration that none of the defendants is and has ever been the plaintiff's tenant in respect of the premises known as Nos. 1 and 3 Meyer Place, Singapore.